IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5865 of 2007

Date of Decision: November 19, 2007

Smt. Rajia alias Ratia .....Petitioner

Versus

Bala Devi and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Sumeet Goel, Advocate for the petitioner.

Mr.Devinder Punia, Advocate for respondent No.1.

S. D. ANAND, J.

1. The petitioner and respondent No.1 (besides certain others) contested the relevant Panchayat Election to the Office of Sarpanch. The petitioner got elected with 521 votes. Respondent No.1 got 508 votes. The other contestants received unenviable low number of votes.

2. Respondent No.1 (Mst.Bala Devi) filed an election petition and applied for the invalidation of the election of the petitioner (before this Court) to the aforementioned office. The allegations, in the course of that election petition, were that the petitioner had indulged in corrupt practices and that the manner in which the votes had been counted was not in order. The suggestion thereby was that if the counting had been done properly, respondent No.1 would have been found to have scored larger number of votes as against the petitioner.

3. (In so far as allegation pertaining to the adoption of corrupt practices is concerned, the learned Tribunal recorded a finding negativing it. That aspect has not been agitated before this Court).

4. The learned Tribunal noticed the controversy about the validity of the counting of votes and directed a re-count vide the impugned order. It is that order which is under challenge before this Court at the hands of the petitioner.

5. I have heard Mr.Sumeet Goel, learned counsel for the petitioner and Mr.Devinder Punia, learned counsel for respondent No.1 and have carefully gone through the file.

6. It is beyond the pale of controversy that as per the provisions of Section 69(2) of the Haryana Panchayati Raj Act, 1994, a candidate inclined to pose a challenge to the validity of the manner of counting has to announce the intention in the relevant behalf before the Competent Authority proceeding with the counting. In the face of that, learned counsel for the respondent argues that the above grievance was indicated by respondent No.1 only verbally before the Presiding Officer but no heed was paid to that grievance.

7. The plea raised is completely bereft of merit. If respondent No.1 had actually done so and the Presiding Officer had not paid any heed to it, the former would have been expected to document the grievance by addressing the Presiding Officer by registered post. Respondent No.1 could complain against the inaction on the part of the Presiding Officer concerned to the higher Election Authorities as well. Nothing of the type is even averred to have been done by respondent No.1 in the present case. It would also require particular notice that even in the course of the election petition

preferred before the Tribunal, there was no averment that a verbal grievance had been made to the Presiding Officer or that the Presiding Officer did not pay any heed to it. In clause 4 (f) of the election petition (Annexure P2), respondent No.1 averred to have raised objections at the time of scrutiny of nominations on the plea that the petitioner and other members of his family members were/are in unauthorised and illegal possession of the panchayat land. Obviously, it is one thing to raise a challenge to the validity of nomination and quite another thing to raise a grievance before the Presiding Officer about the invalidity of the counting of votes.

8. Faced with the predicament aforementioned, respondent No.1 argues that a re-count would settle the controversy in all respects inasmuch as the result thereof (i.e. re-count) would indicate the number of votes secured by each candidate including the petitioner and respondent No.1.

9. The plea is neither here nor there. A re-count cannot be ordered as a matter of course. It can be ordered only under the eventualities envisaged under the law. The plea shall stand negatived accordingly.

10. In the light of foregoing discussion, the petition shall stand allowed. The impugned order shall stand set aside.

(S. D. ANAND)
JUDGE

November 19, 2007
SRM

Note: Whether referred to reporter ? Yes/No